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HON. PETER HITCHCOCK,

LATE CHIEF JUSTICE OF OHIO.\*

THE subject of this memoir was born in the town of Cheshire, in the county of New-Haven, and State of Connecticut, October 19, 1781. Like other youth of New-England, he had the advantages of a common school education, such as they were near the close of the last century; and when of suitable age, turned his attention to classical studies. At the age of seventeen years, he entered Yale College, as a member of the Sophomore class, and graduated in 1801. The pecuniary circumstances of his father were limited, so much so, that in order to acquire the means of defraying the expenses of an education, he was compelled to rely measurably upon his own exertions. For this purpose he spent his vacations, and occasionally some portions of the college terms, in teaching school. In consequence of this embarrassment, he did not succeed as well in his college studies as might otherwise have been expected, although his character as a scholar was reputable. His fellow-students regarded him as a young man of excellent habits and judgment, a careful and accurate, rather than a brilliant student. He did not so particularly attract the attention of the faculty as to excite on their part anticipations that his future course would do eminent honor to his alma mater. In this respect, his case was not unlike those of the late Henry Baldwin and Daniel Webster, in their retirement from college. Like those eminent men also, by his subsequent life, he demonstrated most clearly, that his instructors had signally failed to appreciate his intellectual capacity and power.

After leaving college he made choice of the law as a profession, and engaged in its studies, in the spring of 1802. These studies were pursued with private instructors, and mostly in the county of Litchfield, in his native State. He was admitted to the bar in March, 1804. His examination for admission evinced that his preparatory studies had been pursued with diligence and attention, and that he was well qualified to engage in the practice of his profession. He immediately opened an office in his native town, and continued in practice there for about two years, with fair success for a young man well qualified, diligent, and attentive to business. In 1805 he was married to Miss Nabby Cook, of his native town, who still survives him. Although his prospects for business in Connecticut were as flattering as could have been reasonably expected, yet he was fully aware of the difficulties which a young lawyer must necessarily encounter, especially where the profession is crowded, and the business principally in the hands of old practitioners of established character. He therefore concluded to "try his fortune" in a new country, and in

\* A brief sketch of this distinguished jurist was published in "Biographical Sketches of Eminent American Lawyers," in June, 1852, but he has since deceased, and a more extended notice is deemed due to his memory.

the spring of 1806, removed with his family to Geauga county, in the State of Ohio, and settled on the farm in the township of Benton, on which he resided until his death.

The State of Ohio was at that time truly a new country. It was almost entirely a wilderness, although in some portion of it settlements had been commenced, and here and there might be found an occasional cabin. The entire population did not much exceed one hundred thousand. It was extremely difficult to get from place to place, as the roads, where there were any, were almost impassable, and frequently the traveller was guided by nothing better than a blazed or marked line through the forest. That portion of the State in which Mr. Hitchcock located himself, and which is known as the Connecticut Western Reserve, had, perhaps, fewer inhabitants in proportion to the extent of territory than most other parts of the State. The Western Reserve was at that time divided into two counties, Trumbull and Geauga, the latter having been organized in the spring of 1806. Their population did not then exceed five or six thousand, nor did it increase with much rapidity until after the close of the war of 1812. Western New-York was, at that time, a new country, and its territory had first to be supplied with inhabitants, before it could be expected that many emigrants would venture as far west as Ohio. The Western Reserve, which, in 1806, constituted but two counties, is now divided into ten, and parts of it are attached to three others. In 1850 its population exceeded two hundred and ninety-six thousand, and that of the entire State had increased to nearly two millions.

Judge Hitchcock was not disappointed in his expectations in removing to Ohio. True, law business, as might have been expected, considering the sparseness of the population, was small, and for several years his time was somewhat divided between his profession and the "clearing up" and cultivation of his farm. During several different seasons also, after his arrival in Ohio, he was engaged in teaching school. But notwithstanding these interruptions, and the disadvantages of a residence at some distance from the county-seat, he had his full share of what legal business there was. His practice constantly increased with the increase of population and the improvement of the country. Nor was it confined to one county, but extended over the entire Reserve; throughout all of which, he soon acquired the reputation of a leading lawyer. In the practice he was successful, and had the satisfaction of believing that his clients were well satisfied with his management of the business committed to his care. In conducting this business he was compelled to trust principally to the knowledge of the law acquired in his preparatory studies, as books were scarce in that part of Ohio, and he had not much time for reading. Few now remain who can speak of his early efforts at the bar from personal knowledge; but the records and files of the causes in which he was employed, sufficiently indicate that he was then a well-read lawyer, familiar with the leading principles of the science, and possessed of an acute, practical, discriminating, and logical mind. His cotemporaries describe him as one that came to the trial of his causes well prepared; skilful in eliciting and arranging his proofs; of familiar and persuasive eloquence, united with a happy faculty of

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taking a natural view of the most intricate and complex case, and so simplifying it, as to render it easily understood, and clear to men of ordinary comprehension; and withal possessed of talent sufficient to grapple, successfully, with any amount of new and unexpected matter of law or fact, that should happen to be thrown suddenly upon him, and handle it, apparently, with the same ease that he managed a case composed of the simplest elements. To all this he added the moral influence of a high character for candor, personal integrity, and fairness.

Perhaps the safest opinion of his intellectual capacity and power may be formed from the fact, that he held a leading position at the bar, when it embraced men of signal ability, with whom he was brought into daily conflict. The grave is now closed over most of the eminent lawyers that attended the courts within the circle of his practice, between the years 1806 and 1819. The present generation know but little of the treasures of knowledge and talents brought to the West by those energetic and enterprising pioneers. Tradition sometimes speaks of them. Still the present generation is inclined most erroneously to arrogate to itself superior ability in proportion to its greater facilities. On hearing a remark claiming this superiority, the reply of one of the survivors of that day, himself a competent judge, was, "You are mistaken; I tell you there were giants at the West in those days." Perhaps this reply may be deemed a little extravagant; but the names of those who were wont, at that time, to attend the courts in Trumbull county, furnish, at least, an apology for it. Hon. Elisha Whittlesey, and the late Judges Tod, Pease, and Goodenow were residents, and the Hon. Benjamin Tappan, Philip Doddridge, Charles Hammond, Justice Baldwin, of the United States Supreme Court, and several other prominent lawyers, were frequent attendants. Most of these have departed this life, and have left a posthumous fame for learning and ability, not often equalled by those whose reputation is acquired at the early age at which theirs was. Of the survivors it is unnecessary to speak. Their high standing and eminent ability are well known to their fellow-citizens. These men would have been ranked with the proudest intellects that adorn the profession, in whatever section of the country they had lived.

It was in a new country, not well supplied with books, with the cares of a pioneer, and the charge of a young family upon him, and pitted against such men, that young Hitchcock was obliged to struggle up the hill of fame, in those primitive times; and successfully did he struggle, and secure to himself a proud eminence. It was under such auspices, with but a mere trifle of inherited property, that he was obliged to earn his daily bread and provide for the education of his increasing family, and to bear, in the mean time, his full share of the current burdens of society, at the same time that he provided the means of support for his declining years: yet he was always found undiscouraged and equal to his task. An active and efficient member of society and of the church, he was there, no less than when representing the people in the legislature, in Congress, and in convention, or while discharging the duties of chief-justice of the State, the same self-possessed, imposing, but modest, unassuming, unofficial man of

influence; the same unobtrusive individuality of character and sterling rectitude of conduct, in all stations of life, marked him as a man of more than ordinary mould, and failed not to secure the respect and confidence of his fellow-men, in whatever capacity they became acquainted with him.

Judge Hitecock possessed a strong physical frame, and, during a considerable portion of his life, especially during the last twenty years of it, was favored with good health, and was capable of uncommonly severe mental endurance. His head indicated the possession of a massive, finely-developed brain. The calm self-possession, evenness of temper, firmness of purpose, and self-reliant judgment which he uniformly exhibited, would have been indicated by nature's endowments; yet he had improved upon these natural faculties by constant habits of sobriety, personal restraint, and untiring industry.

In early life he acted efficiently with the political party that brought Jefferson, Madison, and Monroe to the Presidency; and was one of the most successful advocates of their principles in Ohio. This course in politics, and his eminence at the bar, soon brought him prominently before the people; and in 1810 he was elected a representative to the General Assembly of the State. In 1812, he was elected to the State Senate; and in 1814 re-elected. He served during both terms of two years each, and was speaker of that body for one session. As a member of the General Assembly, whether in the house or in the senate, he occupied a prominent position, and exerted his full share of influence. In the fall of 1816, at a warmly-contested election, he was returned to the Congress of the United States, and took his seat as representative in that body in December, 1817. Before the close of his congressional term, he was, in 1819, by the legislature of Ohio, elected a judge of the Supreme Court of that State, for the constitutional term of seven years. He was re-elected to the same office in February, 1826, in March, 1835, and in January, 1845; and finally retired from the bench on the 9th of February, A. D. 1852, at the advanced age of seventy years. He had been returned and served in the State Senate during the term between 1833 and 1835, and was again for one session its speaker. The fact that he entered public life in 1810, and continued to occupy, for a period of forty years, the most important stations within the gift of the people of his adopted State, is an eloquent commentary on his character, expressive of their decided opinion of his merits. It tells better and more forcibly than words can express, how his long and faithful services were appreciated by those who best knew their worth. Nor was this abiding confidence less creditable to those who so cheerfully continued it, than to the worthy recipient of so much public favor. Public applause was never won by him with any of the artifices by which some acquire an evanescent popularity and become great men for a day. He never practised any of the arts of the demagogue; and if he possessed that power, he scorned to use it, but regarded it as a faculty never to be put in requisition. His judicial station, so ably filled for twenty-eight years, was one illy calculated to secure an available popularity, in a community where party lines are closely drawn. The judge who, like him, does his duty, his whole duty, and nothing but his duty, and thereby earns and wins golden

opinions from the learned and the good, must, by the very act of performance, sufficiently thwart the course of the dissolute, corrupt, and criminal portions of community to secure their enmity; and he necessarily incurs the hazard of their holding the balance of power between the contending parties of the day, and of their using it under the false pretence of avenging a real injury.

Moreover, as has been stated, Judge Hitchcock was originally a republican of the Jeffersonian school, and, from his arrival at full age until the formation of new parties, or the re-construction of old ones, subsequent to the election of John Quincy Adams, had uniformly and efficiently acted with the Republican party. Although personally preferring the election of that gentleman to the Presidency, he had, in 1823, presided at a meeting in Geauga County, which nominated Andrew Jackson for that office; and had been as freely berated for what were called his radical notions, at an early day, as were the active supporters of Jackson at a subsequent period. He had strenuously sustained the war of 1812; and for the other supposed political sins of the old republicans, his opponents taxed him with a partisan's full share of responsibility. He, however, in common with many of his political friends, advocated the election of John Quincy Adams, and sustained his administration. He insisted that he could never discover wherein that administration differed materially from those which preceded it, which were admitted to be republican. He ever afterwards acted with the Whig party, because he believed there was more of the spirit of genuine republicanism in that than in the opposing party, and that its measures, if adopted and persevered in, would conduce to the best interests of the whole country. He was conservative in his feelings although not opposed to judicious reforms; but in effecting them, thought gradual, rather than great and sudden, changes most prudent. With the agrarian movements of the present day he had not the slightest sympathy.

His political course subsequent to 1824 (especially as those of his early associates who attached themselves to the Democratic party charged him with a departure from the true faith) placed him in a position to receive the decided opposition of that party, whenever an opportunity was furnished to politicians to make him sensible of their power. Hence arose the two interruptions of the continuity of his judicial service. But these things did not affect him. On his return to the bench, he bore himself with such dignity and fairness, and evinced such ability, as won from those of the profession who acted politically against him, opinions as favorable and an esteem as warm and abiding as those entertained for him by his political friends and associates. His brethren upon the bench who, at different times, had thus displaced him, could never discern the least evidence that the occasion had left upon his mind anything to render their position as associates less acceptable to him or less pleasant to themselves than it would have been if they had been brought upon the same bench under auspices the best calculated to produce friendship. This is decided language; but it is the testimony of one who has means of knowledge possessed by no other man, and who speaks from that personal knowledge. It is what could be said only of a liberal, generous, noble mind. It is saying much for the magnanimity of one who for



years was regarded by all classes as a leading spirit of the Whig party in Northern Ohio; and who had long been a shining and conspicuous target for the shafts of political opponents of all grades.

That this favorable opinion is not the expression of a single friendly individual, may be shown by a single illustration, and its introduction will exhibit this distinguished citizen again acting in a most important station. A practical test of public opinion, in regard to him, was furnished in the election of delegates to the Convention for the revision of the Constitution of Ohio, in the spring of 1850. The district in which he resided was entitled to three delegates, and was pre-eminently the stronghold of Free-soilism. That party outnumbered each of the others by some 500 or 1,000 voters. Actuated by what, under the peculiar circumstances of the case, was considered by the Whigs and Democrats an illiberal policy, and contemplating, as was supposed, measures extremely obnoxious to them, the Free-Soilers put in nomination a full ticket of men of their own party. This course on their part produced an agreement of the other two parties to support a Union ticket, composed of sound Whigs and Democrats—the Whigs had the greater number of voters, and of course a superior claim to two of the three delegates; but inasmuch as their excess of numbers was not in that proportion, in order to compensate for the deficiency, they very generously offered to the Democratic party the selection of the Whigs that should be placed on the ticket. The offer was accepted, and the Democrats, with great unanimity, named Judge Hitchcock, the great leader of their political opponents, and the man of the most influence among them, as their first choice. He then held the office of Chief Justice of Ohio, and with much reluctance accepted the nomination. He, however, did so, and, with the whole ticket, was elected in spite of a severe and bitter opposition, receiving the support of almost every regular Democrat in the entire district. That was a proud day in the life of a toil-worn public servant, and it is believed that its results were not less important to the people of the State of his early adoption, than honorable to him.

Judge Hitchcock took his seat in the convention at the time it assembled, and was active in the discharge of his duties. He performed his full share of labor in the most important committees, examined carefully every subject that underwent discussion, frequently took an active part in the debates, and was conspicuous among the most useful and valuable members of that most distinguished body of men. He returned to his constituents after the close of his labors, and had the signal good fortune to learn from them that they were well satisfied, that his course had fully justified their preference in selecting him. They were satisfied that his constant aim had been to present for the action of the people an instrument as perfect in itself, and as well calculated to promote the happiness and prosperity of the present, and future millions of Ohio, as could be formed; and that he had pursued that object with a singleness of purpose, that had elevated him entirely above the level of a partisan, to the dignity of the experienced, practical statesman.

It was not to be expected that he would agree in all things with the majority, nor did he. When others differed, he heard them attentively,



and used his best efforts by argument to modify their views, and to produce unity of action, by reconciling conflicting opinions. The working of the new constitution will soon test the question how far he was right, and wherein a departure from his counsels was the result of a prudent foresight. He entered the convention a man of large experience, of clear, methodical mind, and probably better understood the defects of the old system than any other man in Ohio. In his recorded votes, and the reported debates, he has left ample means by which posterity can form a correct judgment upon his every act in that body.

He was decidedly in favor of transferring directly to the people the election of the judiciary, and of all State and county officers. The conviction of the policy of a change in this respect had been produced in his mind by careful observation of the operation of the old system. He was opposed to reducing the term of office to the judges, believing that public policy, as well as the interests of persons and property, required its increase rather than its diminution. He would have much preferred that it should have been fixed at fifteen years, with a prohibition against re-election. With the arrangement of the judicial system he was not entirely satisfied. He regarded it as quite problematical, whether the contemplated legal reforms would be found of practical use, especially in the State of Ohio. It had been the effort, both of the legislature and the courts of that State, to simplify legal proceedings as much as possible; technicalities had been in a great measure discarded, and brevity in pleadings was encouraged. True, the common law form of the action of ejectment was retained, but in practice no evil resulted from it, and in no form of action were the rights of parties litigant more easily ascertained and determined than in this: under the rules of court, the issue was so made up, that the great question, and indeed, generally, the only question, was that of title, or the right of possession. Under the new constitution, all distinction in the forms of action and proceedings at law and in equity have been abolished. Whether this experiment will conduce to the ends of justice, time and experience must determine. Many competent men and intelligent lawyers begin to think that the Chief Justice was far from erring in his anticipations on this subject, and to speak of the necessity of modifying the judicial system, and the code, to prevent the failure of both. Doubtless, a future trial should be made before attempting any change, and perhaps the result will be entirely satisfactory.

Judge Hitchcock favored decidedly the provisions of the new constitution recognizing the public debt, and providing for its payment, and limiting the power of the legislature to incur additional liabilities; also, the different clauses requiring the equal taxation of all the property in the State; and the incorporation of the principle of individual liability of stockholders in corporations; although he probably would have preferred to have excepted from the operation of this rule corporations designed especially for purposes of internal improvement.

In reviewing the course of Judge Hitchcock as a legislator, the future student of the history of Ohio will find some things worthy of particular note. He will find votes of his at an early date, that give

evidence of a well-informed and mature judgment, far in advance of the age ; and that its dictates were by him fearlessly acted upon then, when they run counter to the opinions of both political parties ; and afterwards, with his characteristic independence, acted upon, when the Whig party, with whom he was associated, very generally opposed them. History teaches us, that Governor St. Clair owed much of his unpopularity to his efforts to induce the territorial legislature to define and limit in their charters the specific grants of corporate power intended to be conferred upon the artificial bodies which they created. His vetoes of bills, deemed defective in this respect, are supposed to have hastened the period of a change from the Territorial to a State government ; and not only to have excluded from the constitution the veto power, but to have caused the introduction into that instrument of that peculiar clause which, for many years, was construed by the republicans as conferring upon any association, for a lawful purpose, a constitutional right to demand a charter ; and such a charter, as would confer upon them all the powers that might be exercised by the individual in his private capacity.

Acting under this conviction, the legislature had been liberal in the unrestricted grant of corporate power prior to 1810 ; and it was considered a heterodox notion, a departure from the true republican faith, to attempt to trammel the powers of a corporation by legislative restriction, when Judge Hitchcock entered the house as a member. He, however, met the question fearlessly, and successfully maintained that the legislature had that power, and that duty required its exercise, by a careful scrutiny of all such enactments, and a strict definition of the powers intended to be conferred.

He also labored to secure in such grants a clause reserving to the legislature the right to modify or repeal the charters, whenever demanded by a due regard to the public welfare. This proposition found but few supporters in 1810. It was far in advance of the democratic confidence in the people at that day. It was an original movement in Ohio, and was regarded as ultra-radical and impracticable by both political parties. The Federalists, of course, regarded it as entirely unsafe to trust corporate rights to the action of subsequent legislatures. But the experience of forty years produced a great change in the public mind, and the effect was to induce the two millions of people in Ohio, in 1850, to embody in their organic law the rejected principle of 1810. Its introduction was more than acceptable to Judge Hitchcock. At an early day he considered it but the dictate of prudence to thus provide a remedy for incautious, hasty, and ill-advised legislation. He was early convinced that it was a measure of safety, necessary for the proper protection of the public, and this conviction of his early manhood had never been shaken, but on the contrary had increased in strength, as his years and experience matured his judgment.

He was anxious for, and labored to introduce a clause requiring compensation to be made for any individual injury that might be caused by the exercise of this reserved power, and claimed that such clause would be but the declaration of a principle of natural justice, which was unalterable, and of moral force at all times. In this he failed, but yielded with commendable grace to the force of numbers.

He did not regard the absence of such clause as an insuperable objection to the instrument, but expressed the opinion that the rejected provision was one that obviously addressed itself to the sense of justice, inherent in the bosom of every member of community, that no legislative assembly could ever be long sustained in a wanton repeal, injurious to private property. He deemed it hardly probable that a future legislature should coolly disregard a fixed principle of right, or deliberately refuse a remedy for a positive wrong ; and utterly improbable that the people of Ohio would ever, knowingly, sustain them in so doing, or hesitate to adopt the appropriate means for redressing such a wrong, should it ever be perpetrated.

In the opinion of Judge Hitchcock, there were other defects in the constitution submitted for adoption by the people in 1851, and some provisions with which he was not entirely satisfied ; still he voted for it, believing it to be an improvement upon that of 1802, and was anxious for its adoption by the people, and used his influence to secure that end.

The labors of Judge Hitchcock in the Convention did not prevent the performance of his usual circuit duties on the bench, nor his sitting as a member of the court in bank ; but the two offices occupied his whole time, and made that year of his public life one of continuous toil. He had, however, the consciousness of having labored faithfully for the performance of his entire duty to the public, and this was to him an ample reward.

Important and useful as were the services of Judge Hitchcock in other departments of public life, it was upon the bench of the Supreme Court of Ohio that his severest and most untiring efforts were put forth. And he, who states the full extent of his merits as a jurist, is liable to be suspected of presenting the overwrought panegyric of a too partial friend, especially by those not familiar with the nature and extent of the duties performed by him during the long period of his judicial service. Those living in the older States know but little of the labors required of one placed in his position, and are illy prepared to appreciate the disadvantages under which he must act. The State of Ohio was comparatively new and thinly settled in 1819. All the earlier States, and many foreign countries, had contributed largely to its population. This tide of immigration had continued to flow in, and at the time of his leaving the bench had, with the natural increase of population, swelled the number of inhabitants to about two millions. The State which he began to traverse, with two-thirds of its surface in its native forests destitute of the first signs of civilization, had become densely populated, was traversed by rail-roads, canals, and other public improvements, with thriving villages thickly interspersed over a rich and highly cultivated country, which embraced several cities, whose growth and prosperity far exceeded the most sanguine hopes of any who had early prophesied favorably of the prosperity of the Western country—of course the changes were rapid, and the habits, feelings, and opinions of the people were far from being settled and uniform. The task of a judge among such a people is far different from that of one in an old and established community, where the habits of the people have become fixed ; the laws have been reduced to a regular sys-

tem, and by time and experience adapted to the state of society; and where the masses have all been trained in the same school of morals and policy, and comprehend alike the same subject. In such a community, legislative, executive and judicial action naturally assumes the consistent form of a settled policy, produced in the wisdom acquired by experience, instead of being, not unfrequently, the result of sanguine theory, or bold speculation, crudely attempted to be reduced to practice, without the experience necessary to give it practical form to foresee its evils. The duties of the judges of the English courts require them to possess learning, integrity, justice, industry, astute minds, and thorough knowledge of the people of England, and of her public policy, but they have a beaten track to tread, upon which the learning of centuries has shed beams of vivid light. Even the Lord Chief Justice has to pioneer few unexplored regions of thought, where he can derive no aid from precedent well settled, and acquiesced in for ages. He is rarely vexed with crude and ill-digested statutes, the work of minds not familiar with the old law, the supposed mischief, or the means of providing a proper remedy, or (what is still more embarrassing) of a mind more partial to some provision of the German, French, or some other foreign code, than to the English law. A State that changes from a forest to a flourishing community, that increases its numbers more than twenty-fold in fifty years, mainly by an immense immigration, embracing a fair share of the enterprising citizens of every civilized country of the world, necessarily requires time to settle her own policy upon a consistent plan, to regulate her own laws, and to bring the different elements of public thought to act together in harmony. Every man of intelligence comes to a new State more or less attached to some of the institutions, and forms of legislation, and civil procedure of the country of his birth, and will strive, until better informed, to incorporate in the legislation of the State of his adoption whatever he thought worked well elsewhere. Influences of this kind have frequently broken in upon the common law basis of legislation in Ohio, and disturbed the harmony of the system—sometimes, perhaps, for good; sometimes otherwise. But this unsettled state of the public mind, this constant change, necessarily increases the labors of the judge. Let a man of the highest and most cultivated intellect, and of the most untiring industry, be placed in the court of last resort, to expound statutes framed under such auspices, and to decide the numerous other questions necessarily arising; require him to hold court six months upon the circuit, and six weeks in bank each year; and to pass upon more questions thus arising every twelve months, than any judge in England would be required to decide in twice that time; and compel him when in bank to write out and deliver to the reporter his opinion by the morning after he made a decision, and he would soon learn how to appreciate the labors of Judge Hitchcock as a jurist, and to award to him the credit justly his due, upon comparing the reports of his judicial decisions, prepared under such circumstances, with those of men of standard ability, found in other law reports.

It was amid this unsettled state of society and law, and this constant change, and under circumstances such as have been described, that he was called upon to discharge his duties as judge. He labored faithfully to introduce system, to sustain and enforce those principles

of law sanctioned by the wisdom and experience of ages, to adapt judicial proceedings to the character and wants of the people, and to give permanency and consistency to the jurisprudence of the State. In any emergency, he seemed to bring to his aid intellectual strength and research adequate to the occasion, and his success was not only highly satisfactory, but highly honorable to him.

Ohio gave unequivocal evidence of her opinion of his sterling worth and great fitness for judicial station, by continuing him so long in her service in that capacity. The careful reader of the twenty volumes of Ohio Reports, who reflects upon the nature of his labors, and the circumstances attending them, will never condemn his judgment. To him these volumes are a monument of enduring fame. They exhibit the solid structure of his mind. They show him, as he was, a man well versed in the elementary principles of law, anxious to do right, and to give plain reasons for his own belief that what he did was right, without making any pretence of superior ability, or aiming to embellish his opinions by any of the ornaments of fine style. That he never erred, is what can be neither said of him nor any other man. But with him an erroneous decision was a very unusual occurrence. Some years since, Chancellor Kent, whose opinion is entitled to the highest credit, speaking of the first eight volumes of reports containing Judge Hitchcock's early decisions, said they exhibited a sound and healthy administration of the law in Ohio, which compared favorably with the jurisprudence of the older States.

On the bench Judge Hitchcock was laborious, systematic, punctual, and attentive. He dispatched business with peculiar facility, although not without deliberation. His official life was one of constant labor, but he was rarely, if ever, in a hurry. He readily ascertained the points in a case which were decisive of its merits, and his mind seemed at once to reject every thing that was immaterial. He read the manuscript pleadings, evidence, and arguments submitted, with great rapidity, and never contented himself until he had read every paper connected with a case. His memory was retentive, and by a single reading of the papers in a chancery case, however voluminous, he seemed to acquire a perfect knowledge of their entire contents, and of the whole matter in controversy, and would, almost uniformly, state with accuracy the exact point upon which the case turned, and name the evidence that bore upon it. This faculty enabled him to concentrate his whole mind upon the question in hand, to recur in debate without loss of time to the proof that would correct or strengthen a first impression, and, united with his habit of persevering with an investigation once begun until he had finished it, enabled him to turn off, well done, a mass of business that more sprightly but less methodical minds would not be able to dispose of as well in the same length of time.

He understood the great object of the whole machinery of courts to be the enforcement of justice between man and man, and thought, that if all were so instructed as to entertain correct notions of right and wrong, and would observe the sound moral rule of doing to others as they would that others should do to them, there would be very little need of courts of justice. His anxious desire ever was, that strict justice should be done between parties litigant, and to arrive at this



end, he perhaps sometimes too much disregarded technicalities. He had very little reverence for a rule, the justice of which he could not discern. If, in a given case, a technical rule was sought to be used to bring about a result which conflicted with his strong sense of justice, he was apt to suspect it was misapplied, and seek some way to avoid its force, and would invariably resist its application, until convinced that there was no way of escape, but by unsettling the rules of established law. In the estimation of some, this characteristic of his mind was a defect. If so, it was an amiable one. It existed in the minds of Chief Justice Marshall and Theophilus Parsons to an equal degree. And whatever counsel, in the excitement of the moment, may think, suitors will ever appreciate the judge whose aim is to have justice done in all cases that come before him. Such a judge will ever, of necessity, suspect either the soundness of the rule itself, or the propriety of its application to a given case, whenever he sees it working an unjust result. Regarding justice as the paramount object of the court, he will be loth to defeat that object, and will never suffer it to be done where he has the power of preventing it, without departing from the known rules of settled law.

A firm, consistent thinker, relying on his own judgment, and carefully surveying his ground before forming a conclusion, it was no easy matter to effect a change in his opinion, when once decidedly formed. However highly he might appreciate the ability of one who should differ from him, still that difference, unless sustained by fact or law, which undermined the pillars upon which he had based his own conclusion, never seemed to shake his confidence in the correctness of his own judgment. Opinions, with him, were not a matter of choice, but the result of study and reflection, and both were uniformly put in requisition and exercised, until a definite and satisfactory conclusion became the result. To move him afterwards from the ground he had assumed, it was ever necessary to understand his reasoning thoroughly, and to show him that, as to some one fact or legal proposition, he was mistaken; and to enable one to thus meet, and, if possible, overthrow him, he would frankly expose the whole basis of his conclusion, and if met by a fair exposition of a false position, would readily see it and yield to its force, without an effort to sustain a first impression by resorting to insufficient reasons. He never, on the bench, exhibited the weakness of a drowning man, catching at whatever his hands could reach, for self-support. He brought nothing to his aid, save what he regarded as reliable. This characteristic of a powerful intellect made him a very influential member of the court at all times, and his habitual courtesy and candor rendered him not less agreeable than reliable as an associate.

Much the most laborious and important of his duties during his twenty-eight years of judicial service were performed upon the circuit. Of the extent and character of this service, none except those immediately concerned, or connected with him, can form any adequate or correct opinion. No report of such cases was ever made; none can now be made—yet they embraced, probably, forty-nine out of every fifty causes that he ever passed upon. Almost uniformly these cases were studied by him with the same care as those determined in bank.



and in pronouncing his circuit opinions orally, he took pains to state clearly all the questions made, and the views entertained by the court upon each, and seldom left a cause without satisfying the counsel concerned, and all familiar with it, that he, at least, had investigated the matter until he thoroughly understood it, even though he were unable to convince them that he had escaped error in its determination.

In committing his opinions to writing, Judge Hitchcock was not always, perhaps, the most happy, not because he was incapable of inditing a close, terse, and pointed opinion, but because he could seldom take the time requisite to prune, condense, and weigh as would be desirable, the exact force and power of the language used. The necessity for this hasty preparation of opinion arose from the constant pressure of business in the Supreme Court during the whole of his long period of service, and from the fact that a law of the State required manuscript opinions to be forthwith handed to the reporter, on the making of a decision. This statute often deprived the judges of the requisite opportunity of revision, and is believed to have been without a parallel in any other State. Notwithstanding these disadvantages, naturally inducing a habit of writing with great rapidity, and its legitimate effect upon his style, the opinions of this eminent man still exhibit him in a light that will, in the estimation of sound lawyers everywhere, stamp him as a jurist of no ordinary ability, and give him a high rank.

It was felt by the bar of Ohio, and well said by one of its members, in their behalf, on announcing to the court in session at the time of his decease, the sorrowful event, that since the last adjournment of that court, a most distinguished man had fallen, one whose death created a void, whose departure was a loss to them, to the State, and to the cause of justice. In the death of such a man, society is bereft of a most valuable member, and has just cause to mourn.

During the last term of his official service in the court in bank at Columbus, in 1852, the bar of Ohio furnished a highly complimentary testimonial of their estimate of his merits. They procured an eminent artist to paint for them a portrait of the venerable judge, with a view to have it placed in the court-room, where his countenance had been so long familiar, and where his ability had been so conspicuous. It of course represents him as he appeared when about to retire from public life, at the advanced age of seventy-one years, more than forty of which had been faithfully spent in the service of the State. The feelings which prompted honorable and liberal-minded men to endeavor to perpetuate, and preserve in their hall of justice, a striking resemblance of one generally esteemed, and eminently distinguished in that high tribunal; of one who through a period of twenty-eight years had discharged the duties of his exalted station patiently, faithfully, without fear or favor, and uninfluenced by any illegitimate consideration, may be readily appreciated. It was a tribute of affection and respect, from his professional brethren, which they regarded as having been nobly earned. No one in Ohio more richly deserved a similar tribute. He had done more than any other man in the State to elevate the character of the profession, and to establish the jurisprudence of the State on a scientific, sound, practical basis. In private life, and in the public stations which he had so long and so ably filled, his life

had furnished a practical example, well worthy the emulation of the young men who should succeed him, that few great men had equalled, still fewer had excelled; and when the venerable judge had nearly accomplished his public labors, and was about to retire from the stage of public action, those who knew him best felt the force of this truth, and hence this spontaneous token of its acknowledgment. It was but a modest tribute, nevertheless it went to the full extent that the modesty of the honored subject of the compliment was willing to permit. None of his predecessors had been thus honored, and his delicacy of feeling rendered him reluctant to assent even to this.

Judge Hitchcock was esteemed by those who intimately knew him, not less as a man and a Christian, than as a jurist and a civilian. In all his social and domestic relations, he exhibited qualities of heart and action that ever endeared him to those brought into near contact with him; the memory of which, stealing with sweet fragrance over their minds, will often awaken the feeling of fond regret at the bereavement they have sustained.

Descended from a Puritan stock, and reared amid the influences which, in olden time, were wont to cluster around the well-ordered New-England home, he imbibed in childhood the principles of sobriety and uprightness which adorned his subsequent career, and formed the basis of that distinguished confidence which was in after life reposed in him, even by his most decided political antagonists. His youth was marked by general correctness of deportment, and he entered upon the scenes of public life with those moral and industrial habits which, in connection with elevated aims and fair ability, give a sure prestige of success and eminence in any honorable vocation.

The moral and religious sentiments inculcated under the paternal roof became with him, in riper years, matters of fixed and controlling conviction; hence when, long before he professed a personal interest in the Gospel, his lot was cast in a new settlement, he freely and devotedly gave his influence and aid to rear and support its institutions. His house was the home of the pioneer missionary whenever one happened to pass that way. When no minister was present, he was wont to aid in sustaining Sabbath worship, by reading sermons, and on several occasions, when but a single professor of religion was present, and he perhaps a diffident youth, he persuaded him to lead in prayer, and himself conducted entire all the other exercises of the day.

On the 4th of March, 1832, at the age of 51 years, (and just twenty-one years before his decease,) he made a public profession of religion, uniting with the Congregational Church in Benton, of which he remained, until his death, an esteemed and efficient member. In the discharge of the duties pertaining to this relation, he was equally strict and faithful, as in the discharge of those of his official life, and presented a model of exemplariness which is rarely exceeded. When at home, nothing but infirmity in himself or family was ever permitted to detain him from the services of the sanctuary, and other stated or occasional gatherings for Christian culture, or the promotion of the general interests of morality and religion, and usually he was prompt to render such counsel and aid as the case might require. A distinguishing element

in his Christian, as well as judicial character, was a steadfast integrity in obeying his convictions of duty. Though no stranger to deep religious sensibility, the fitful impulses of emotion were not needed to arouse him to action.

He was the hearty and liberal friend and patron of the leading benevolent enterprises of the day; and though sometimes reproached with an unduly cautious, and obstinate conservatism, few have had more nearly at heart the best interests of humanity, or more sincerely wished success to every judicious effort for its elevation and improvement.

In deportment, he was reserved and unassuming; in taste and feeling opposed to artificial parade and show; a lover of republican simplicity of style and manners; but at the same time, a pattern of generous and hearty hospitality. By many who viewed him at a distance he was regarded cold, and unsocial; but a more intimate acquaintance disclosed a heart glowing with all the genial sympathies of love and friendship. The needy and afflicted ever found in him a judicious and kind benefactor and counsellor. His reproofs and sarcasms sometimes fell upon the misdoings and follies of those around him with withering power, but usually his intercourse with others was marked with great comity, and a tender regard for their feelings. Ever ready to bestow his influence and active aid to promote the personal and social welfare of those around him, his removal has left a vacuum in the neighborhood circle of his late residence, which will long be painfully felt.

His social attachments were unselfish, enduring, and practical; and everything within his power which the subjects of them might need, was ever freely and cheerfully bestowed; and the gratification he evinced when the welfare of friends was thus promoted, presented a beautiful illustration of the Divine saying—"It is more blessed to give than to receive."

His domestic affections were especially strong and tender. The bosom of his well-ordered and intelligent family was emphatically the earthly home of his soul, his cherished and earnestly-coveted retreat from the cares and toils of public life. In the relations of husband and father, he was ever the faithful, considerate, and affectionate counsellor, guardian, and guide. Controlling his children with a mild yet firm discipline, savoring not less of reason and love than of authority, he won to himself, in an eminent degree, not only their respect and veneration, but their confidence and love. Deeming preparation for practical usefulness in life the best patrimony he could leave them, he directed his efforts in their behalf not to the amassing of wealth, but to the bestowal of that mental and moral discipline and training which should qualify them to be the artificers of their own fortune, and sustain with success and honor the responsibilities of life. And in this he had his reward. He lived to see his seven surviving children, three sons and four daughters, all settled in life, and occupying positions of respectability and usefulness, and, what was yet more grateful to his heart, all professed followers of the Saviour. The two eldest of these sons were educated at Yale College, and one of them is now a Judge of the Court of Common Pleas in one of the judicial districts of

the State ; the other a minister of the Gospel, and pastor of one of the churches in Columbus, Ohio. The youngest son is a farmer, and occupies the old homestead.

Full to overflowing was the cup of earthly happiness of the venerable father, when, in later years, Providence permitted a family gathering around his hearth-stone, to mingle mutual sympathies and congratulations, and join in prayer and praise to the Father of Mercies. Never will those thrilling interviews and seasons of prayer be forgotten by any who were favored with the privilege of participating in them. From the heart of his children never will be effaced the memory of paternal fidelity, tenderness, and wisdom, with which he watched and guided their early ways, until they were prepared to assume for themselves the responsibilities of life ; and painfully will they miss the counsel which, in their riper years, they were wont to seek at his lips.

He was privileged not to outlive his activity and usefulness, but to fall at the post of duty, in the unabated vigor of his strong intellect. Early in December last, he repaired to Columbus to attend the annual session of the Supreme Court. He was retained in some cases of importance, and one in particular which required profound effort in the preparation of the argument. His intense application developed and aggravated disease of the liver, to which he was predisposed ; and that induced ulceration of the larger intestines, which was the immediate cause of his death. The symptoms, however, were not sufficiently striking to alarm, or cause him to suspend his labors, until it was too late for remedial aid.

His debility gradually increasing, he left Columbus February 21st, and arrived at his son's, the Hon. Reuben Hitchcock, in Painesville, the same day. Though extremely anxious to reach his home, his failing strength forbade it. From this time he declined rapidly. Stupor, and slight wandering of mind supervened, and prevented his having much conversation with his friends. On the morning of the 4th of March, the entire family having arrived, Mrs. Hitchcock, with some difficulty, aroused him to consciousness, and remarked, " Our children are all with us now." He replied, " Oh, my children ! all be Christians." This was his last utterance. A farewell more characteristic of the Christian father, or more worthy of the occasion, could not have been chosen. After this, he lingered in great agony until about two o'clock, P. M., when he gently fell asleep in death.

His remains were conveyed to Benton ; and on the following Sabbath, a large and deeply-affected concourse of people attended a funeral service at the church where he had been accustomed to worship, and followed him to the grave.

The light of his active usefulness and living example in Church and State is extinct ; but a precious legacy remains, for " the memory of the just is blessed."

The news of his decease, as it spread through the State, produced a deep sensation, as it called forth such expressions of regret, of affectionate remembrance, and of esteem, as might be expected on the death of so great and so good a man. In the principal cities in the State and counties where courts were in session, meetings of the bar were held, addresses made, and appropriate resolutions adopted.

The resolutions adopted in Mulhenning county were presented to the court, by Judge Birchard, who had in 1842, been the opposing and successful candidate in opposition to him for election to the Supreme Bench, and who afterwards served as associate with him for several years. On moving that these resolutions be entered on the journals of the court, judge Birchard, among other remarks made, bore the following honorable testimony to the character of the deceased :—

“ I feel that in the loss of such a man society has cause to mourn. It has been bereft of an experienced, learned, able jurist; of one patient, careful, and untiring in his investigations, and as I think, of great integrity. In the varied relations which he and I have occupied, placed as we have been, in opposition to each other by our political friends as candidates for the honors of the Supreme Bench, and radically differing, as we often did, upon many of the exciting political questions which have agitated the people of the Union within the last twenty years, and changing, as you are aware we have, our relative position from the bar to the bench, and from the bench to the bar, and finally for a series of years being brought into intimate relation as members of the same court, I have had means of knowing Judge HITCHCOCK, such as few men possess. I speak not to create fame for the dead, that was unmerited in life—there is no need of that. The proceedings of the Legislature when he was a member, and of Constitutional Convention, bear some evidence of the ability of the man, and the first twenty volumes of the Ohio reports, will carry down to posterity full and ample testimony of his learning, his sound judgment, and patient and careful industry as a jurist; to him a memento of fame more lasting than monuments of brass or marble.

“ In recurring to the years of our acquaintance, now more than a quarter of a century, I cannot recall to mind an act of the great man who has fallen, that would tend to mar the beauty of his character, public or private; I know of none. A man of strong intellect, he naturally was fixed in his opinions, when once deliberately formed. But I ever found him patient, and cool in investigation, free to consult, free to consider the suggestions of others, free to trace out a point of difference, free to place another in full possession of the exact position upon which he predicated a conclusion; and if the ground of his argument ever failed him, he was always of too proud an intellect to attempt to sustain his favorite conclusion by seizing a false premise. In fine, he was a man, that not only invariably aimed to do right, but his mind was so formed, as to be admirably well calculated to come to the knowledge of the right.

“ So long as his own convictions of duty were clear and unshaken it was impossible to move him. Popular prejudice might be against him, but its force would seem to be spent with as little effect, as the ocean wave has before the granite of its own beaten shore. This was the general character of the man. It enabled him to hold, on exciting occasions the ‘even scales of justice,’ with a firmer hand than any man with whom I was ever brought in contact. An apparently cold exterior, and sometimes an abrupt manner of speaking, have doubtless sometimes given offence to those who did not thoroughly



understand, that within that bosom beat the kindest sympathies, and yet his was a bosom that possessed such sympathies.

Much might be said of his personal and private character, but I am admonished to forbear, since my tribute can add but little to the honor of one who was beloved by all who knew him.

The resolutions adopted by the bar in Cleveland, are a fair specimen of those adopted elsewhere in the State—they are as follow :—

“ *Whereas* authentic intelligence has been received of the death of our distinguished friend and fellow-citizen, PETER HITCHCOCK, of Geauga—a man who, during a period of forty years, has been eminent in this State for his ability and usefulness, in almost every department of the public service—

“ *And whereas* the members of this bar, deeply sensible of the loss which the profession and the public have sustained by this dispensation of Divine Providence, are desirous of giving utterance to their sorrow, as well as of publicly testifying their regard for the memory of a great and good man—

“ *Therefore, Resolved,*—That, in the death of Peter Hitchcock we deplore the loss of a patriot distinguished for his advocacy of popular rights, and for his attachment to free institutions ; of a legislator eminently practical, wise, and sagacious ; of a judge, unsurpassed in integrity, in firmness, in strength and grasp of mind, in clearness of perception, and freedom from extraneous influences, and who, in the combination of qualities that go to make up a great judicial character, has probably never been equalled among the jurists of this State ; of a faithful public servant, whose agency is perceivable in everything that has imparted value to legislation, or inspired confidence in judicial action ; whose usefulness is to be measured, not only by the positive good that he has done, but by the evil that he has prevented ; who, beyond any other man, has impressed his mind and character upon the institutions of the State ; and who, as much as any other, is entitled to be held in grateful remembrance by the people of Ohio.

“ *Resolved,*—That the proceedings of this meeting be published in the daily papers of the city ; and that a copy thereof be forwarded to the family of the deceased, as expressive of the respectful condolence of this bar in their afflictive bereavement.”

At the time of Judge Hitchcock's decease, the legislature of the State was in Session, and before its adjournment adopted the following joint resolutions :—

“ *Whereas* we have heard with the deepest concern of the death of the Hon. Peter Hitchcock, late Chief Justice of the Supreme Court of the State : *And Whereas* the deceased, by his long, faithful, and distinguished public services, has endeared himself to the people of Ohio : *Therefore, be it*

“ *Resolved, by the General Assembly of the State of Ohio, That in*



the death of the Hon. Peter Hitchcock, the State has lost an able jurist and faithful public servant, and society an honorable and useful citizen—

“ *Resolved*,—That we deeply sympathize with the family of the deceased in their sad bereavement.

“ *Resolved*,—That the Governor be requested to transmit a copy of the foregoing resolutions to the family of the deceased.”

These testimonials show most clearly the estimation in which Judge Hitchcock was held by the people of his adopted State, and that by his death she lost one of her greatest—one of her best men.

But his memory still lives. The impression made by him upon her institutions, and upon society, still remains ; and the influence of his example and his active life will not cease with the present generation, but will long continue its effect for good.





